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Charleston Gazette

U.S. Supreme Court refuses to hear Spruce Mine case

By Ken Ward Jr.

CHARLESTON, W.Va. -- The U.S. Supreme Court has declined to take up the continued efforts by Arch Coal lawyers to overturn a federal government veto of the permit for one of the largest mountaintop removal coal mines in West Virginia history.

The move, announced Monday, is a victory for the U.S. Environmental Protection Agency and for coalfield residents who continue to oppose mountaintop removal, citing scientific findings that the practice seriously damages water quality and that residents who live near large-scale surface mines are at great risk of harmful diseases and premature death.

"The coal industry has falsely painted the Spruce Mine veto as an example of EPA overreach and a 'war on coal,' when in fact, EPA's authority to veto this permit is obvious from the face of the statute and EPA's decision is based on clear scientific evidence of serious environmental harm from mining," said Jim Hecker, environmental enforcement director at Public Justice and co-

counsel in the 1998 case that initially blocked the Spruce Mine.

Arch Coal had asked the court to overturn an April 2013 decision by the U.S. Court of Appeals for the District of Columbia, which had backed EPA and overruled a lower court judge's conclusion that the federal agency lacked the legal authority to veto a Clean Water Act permit the federal Army Corps of Engineers had approved for the mine.

The case could now go back to U.S. District Court, where Arch Coal could continue its legal fight by arguing that EPA did not follow proper procedures when it vetoed the permit.

At issue in the Spruce case was an Army Corps-issued permit for the Spruce No. 1 Mine, an operation environmentalist groups have been trying to stop since 1998, when it was first proposed as a 3,113-acre extension of Arch's Dal-Tex Mine that would have buried more than 10 miles of streams.

U.S. District Judge Charles H. Haden II blocked the permit in 1999, putting more than 300 United Mine Workers union members at Dal-Tex out of work. Since then, Arch has transferred the site to its nonunion operations, and the Spruce Mine has undergone one of the most detailed environmental studies ever in the coal industry.

Under Section 404 of the Clean Water Act, the corps generally reviews and approves these permits, which allow mining operators to bury streams with millions of tons of waste rock and dirt. The law says the EPA can "restrict, prohibit or withdraw" corps approval of any site for waste disposal "if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas." In the more than 40 years that the EPA has had this veto authority, it has used it 13 times.

Corps officials in January 2007 issued a permit for a scaled-back 2,300-acre operation that would bury more than seven miles of streams. The mine eventually would employ 250 workers and mine about 44 million tons of coal over about 15 years.

EPA officials have questioned the Spruce Mine from the beginning and, in a comment letter submitted to the corps under President George W. Bush in 2006, complained about the potential impacts and said more changes in the operation were needed.

In January 2011, the EPA rescinded the corps' approval for Arch to dump waste rock and dirt into 6.6 miles of Pigeonroost Branch, Oldhouse Branch and their tributaries. The agency said it would allow mining to continue on another portion of the site, burying nearly a mile of streams in the Seng Camp Creek watershed, because work there already had begun. The EPA cited the growing scientific evidence that mountaintop removal mining significantly damages water quality downstream, and noted an independent engineering study that found Arch Coal could have greatly reduced the Spruce Mine's impacts.

Arch Coal's Mingo Logan subsidiary appealed the EPA veto. In a March 2012 ruling, U.S. District Judge Amy Berman Jackson sided with the company, saying the veto was "a stunning power for an agency to arrogate to itself when there is absolutely no mention of it in the statute."

In its ruling a year later, the appeals court said the Clean Water Act contains "unambiguous language" that "manifests the Congress's intent to confer on EPA a broad veto power extending beyond the permit issuance."

Arch Coal officials did not respond to a request for comment. The National Mining Association issued a statement that said the Supreme Court's decision not to hear the case "allows a cloud of uncertainty to hang over any project and companies will lack the assurance required to make investments and create U.S. jobs."

EPA spokeswoman Alisha Johnson said the court's decision "preserves the status quo and does not create uncertainty."

Newport News Daily Press

Study of PCBs in the James River continues

March 24, 2014|By Tamara Dietrich, tdietrich@dailypress.com

The lower James River is a draw for recreational fishermen, but with one important caveat: Don't eat what you catch.

Or rather, the Virginia Department of Health advises against eating a few select species, especially the bigger ones, and against eating a whole raft of other species more than twice a month, no matter the size.

The reason? A particularly nasty family of synthetic chemicals known as PCBs, or polychlorinated biphenyls, that pollute the James and pretty much every waterway touched by human industry.

PCBs are a concern along the middle and lower James from Richmond south to the Hampton Roads Bridge-Tunnel — the stretch of river where the Health Department's advisory is in effect. This includes tidal portions of tributaries to the James, including the various branches of the Elizabeth River. A less-strict advisory covers the James from Richmond up to the Big Island Dam below the Blue Ridge Parkway.

Since 2009, the Virginia Department of Environmental Quality has been testing fish tissue, sediment and water quality to help determine concentrations and possible sources of PCB contamination.

The goal, said Mark Richards, an environmental scientist in the DEQ's Richmond office, is to figure out what can be done about PCBs to make the river safe again for fish.

"What will be reduced to have the biggest bang for the buck," Richards said.

Richards is in charge of the project to determine the Total Maximum Daily Load — or TMDL — allowable for PCBs that would bring water quality back to federally acceptable levels.

At 10 a.m. Tuesday, the DEQ is holding an informational meeting at its regional office in Virginia Beach to update the public and other stakeholders on the progress of their research. The office is located at 5636 Southern Blvd. Two other meetings were held earlier in James City County and Richmond.

Richards said tests from 2012 samples still show unsafe PCB levels, but "they appear to coming down" from levels found in testing from 1997-2005. The reason for the decrease is unknown.

Hotspots for PCBs in the James appear to be around Richmond and Hopewell, he said, and on the Elizabeth River, which merges with the James at the mouth of the Chesapeake Bay.

The Virginia Department of Health says the effects of PCBs depend on the amount of exposure, but the U.S. Environmental Protection Agency determined they may increase the risk of cancer, and are known to cause skin conditions. Animal studies have shown PCBs can damage the liver, stomach, thyroid gland and alter the immune system, behavior and reproduction.

PCBs remain in fat and tissue and can accumulate as big fish eat smaller ones, increasing in toxicity up the food chain at levels even higher than the surrounding water.

PCBs are good insulators and don't burn easily, the Health Department says, and were used as coolants and lubricants in transformers, capacitors and other electrical equipment.

They were also used in a host of other industrial applications: motor oil, adhesives and tapes, oil-based paint, caulking, plastics, carbonless copy paper and floor finish, according to the EPA.

PCBs were banned in this country in 1979, but still continue to make their way into waterways through stormwater runoff from landfills, military installations and other sources. In the James, the Ghost Fleet of decommissioned warships is believed to be leaching PCBs, as well as other contaminants.

Richards said even if the PCBs spigot were turned off, it would take decades to flush them from the system.

"If we cut off all sources that are still occurring, it would still take, 25, 30, 40 years for PCBs to completely go away," Richards said. "It's what studies have shown. It's an unfortunate reality."

The TMDL project completed its monitoring at the end of 2013, and this year will finalize the modeling components for its report.

In early- to mid-2015, it expects to submit a draft report for review, including another round of

public meetings.

Dietrich can be reached by phone at 757-247-7892.

Wheeling Intelligencer

Murray Targets EPA In Lawsuit

‘Radical’ agency is killing coal industry, company contends

March 25, 2014

From Staff Reports - By CASEY JUNKINS Staff Writer , The Intelligencer / Wheeling News-Register

WHEELING - Murray Energy is suing the U.S. Environmental Protection Agency for failing to consider how many people may lose their jobs because of the Clean Air Act in what the company calls the continuation of the "war on coal."

After giving notice of intent to sue the EPA in January, St. Clairsville-based Murray filed the suit in the U.S. District Court for the Northern District of West Virginia in Wheeling on Monday morning. In addition to President Barack Obama, the company accuses EPA Administrator Gina McCarthy of enforcing "the Clean Air Act in a manner that is causing coal mines to close, cost hard-working Americans their jobs, and shifting employment away from areas rich in coal resources to areas with energy resources preferred by the agency."

"We must defend these jobs, families and America - and force the EPA and President (Barack) Obama to comply with the law," said Gary M. Broadbent, assistant general counsel and media director for Murray Energy. "The illegal actions of the Obama EPA are a very human issue to the management and ownership of Murray Energy."

Murray Energy, with about 7,200 employees and 13 active coal mines in six states, is the fourth largest coal company in the nation in terms of revenue and fifth largest in terms of production.

In December, the company closed a \$3.5 billion deal to acquire five Consol Energy mines in West Virginia.

Along with the parent company, Murray Energy Corp., many of its subsidiaries are listed as plaintiffs in the lawsuit, while McCarthy is listed as the defendant.

In filing this lawsuit against the EPA, Murray officials state they fighting to protect workers who want to earn a living with honor and dignity, while trying to defend low-cost electricity for all Americans.

Using words such as "radical," "senseless," and "destructive," Murray officials allege the EPA is "seeking to eliminate the U.S. coal industry." According to the suit, the Obama administration and EPA's stringent enforcement of the Clean Air Act is leading to the closure of 392 coal-fired power plants across the country, including the American Electric Power Kammer Plant in Marshall County.

"The Clean Air Act is crystal clear in requiring the EPA to evaluate the negative impact that their regulations will have on jobs, but they have repeatedly been derelict in their duty," Broadbent said.

According to the EPA website, the original Clean Air Act became law in 1963, but it became much stronger in 1970 - and again in 1990. Since 1970, the EPA states the act has helped Americans breathe less pollution and face lower risks of premature death and other serious health effects.

Other accomplishments under the act, according to the EPA, include: reduction of power plant emissions that cause acid rain; reduction of interstate air pollution; protection of the ozone layer saving people from skin cancer and cataracts; and limiting emissions that cause climate change and ocean acidification.

Nevertheless, Murray officials want the federal court to force the EPA to "cease and desist from its disastrous war on coal;" order McCarthy to evaluate whether her agency's actions have caused job losses; and prevent McCarthy from approving further regulations that would allegedly hurt the coal industry.

Contacted by email, a spokesman for the EPA said officials will review the complaint when they receive it.

Lancaster Newspapers

Old mill dam field in Lancaster County is crucible for newest tool to clean up the Chesapeake Bay

By AD CRABLE | Staff Writer

A little spring-fed stream not far from where pioneer Hans Herr settled in West Lampeter Township may soon make a big splash.

For eight years now, many eyes associated with the Chesapeake Bay cleanup have been focused on the restoration of a half-mile strip of Big Spring Run, just off of Route 222 along Gypsy Hill Road.

There, scientists descended on a farm field that had been filling with sediment because of a grist mill dam built around the time that Herr settled nearby in the early 1700s.

Some 23,000 tons of this so-called “legacy” sediment were dug up and sold to an area farmer.

Then the streambed was allowed to return to the shallow wet meadow that had existed for thousands of years.

Thousand-year-old seeds, mostly sedges, found in the muck helped scientists and energetic volunteers re-create the wetlands by planting thousands of plants.

What’s happened since then was the focus of two presentations Monday, the second day of a three-day gathering of some 1,300 regional members of The Geological Society of America at the Lancaster Marriott at Penn Square.

The Pennsylvania Department of Environmental Protection, the federal Environmental Protection Agency, National Science Foundation and others that invested in the outcome have been waiting in anticipation.

With two years of post-restoration monitoring now in hand, Franklin & Marshall College researcher Dorothy Merritts says the results are just what she had expected and what Bay cleanup policy makers had hoped.

Namely, in piedmont areas where old dams backed up streams — much of Pennsylvania, for example — digging up old legacy sediment and allowing a return to grassy wetlands is an important and cost-effective method to stem the flow of smothering sediment and oxygen-robbing nutrients into the Chesapeake Bay.

At a relatively small sliver of Big Spring Run, the wetlands has reduced soil passing through by about 100 tons a year, she said.

That’s about 75 percent more effective than the stream was before.

And the wetlands ecosystem still has not fully taken hold.

“We’re very excited,” Merritts said, standing with two F&M research assistants in front of a booth with posters explaining the project and a laptop showing a time-lapse video of the floodplain filling up after a heavy rain.

“It could be another tool for water improvements.”

The legacy sediment discovery by Merritts and fellow F&M researcher Robert C. Walter

occurred in Lancaster County in Manor Township in 2002.

It led husband-wife team to conclude that farmers were getting unfairly blamed for soil runoff when much of the sediment flushing into the Bay was coming from streams merely seeking original contours by digging through soil deposited long ago.

Their revelations also called into question the wisdom of using traditional stream restoration in many areas. Stream-revitalizing techniques often involve using stone riprap to stabilize stream banks and a variety of in-stream structures to slow down or re-direct eroding current.

But in areas with unnaturally built-up layers of legacy sediment, it is no more expensive and much more effective to remove the topsoil and bring back the wide wetlands flood plain, Merriitts and Walter have preached.

Not to mention the restored wetlands are more attractive to wildlife and more pleasing to the eye, Merriitts thinks.

Merriitts said with a second year of solid information ready any day now, DEP will ask EPA to officially approve legacy sediment stream restoration as an accepted conservation tool known as a “best management practice.”

Being recognized as a Bay BMP would garner financial support to implement projects and allow landowners and others who voluntarily undertake them to accrue nutrient credits that could be sold for money.

Charleston Gazette

Putnam officials want DEP to void MCHM dumping permit

By Ryan Quinn

CHARLESTON, W.Va. -- Officials with Putnam County and the city of Hurricane want the state Department of Environmental Protection to void the permit allowing Waste Management to deposit MCHM-contaminated wastewater mixed with sawdust into a local landfill.

County Commission President Steve Andes said the two governments made the request Friday to DEP Secretary Randy Huffman, and will request an injunction if the agency does not comply. DEP spokesman Tom Aluise did not immediately return a request for comment.

The chemical was spilled on Jan. 9 into the Elk River by Freedom Industries. It fouled the water of about 300,000 West Virginians for weeks. Diversified Services, the company hired to clean up the spill, was mixing the chemical with sawdust and dumping at the Hurricane landfill.

Waste Management announced March 15 it had voluntarily stopped depositing the material at the Disposal Services landfill on W.Va. 34, but Andes said he wants the permit rescinded so the company can't start dumping it again.

"There's the possibility they could go back," Andes said. He said the county attorney would pursue the injunction if DEP didn't pull the permit Monday.

Waste Management has permission to deposit up to 700 tons of the material into the landfill through October.

Hurricane Mayor Scott Edwards posted on his Facebook page Monday that the city and county are also jointly asking a Kanawha County judge to "compel the remediation of the Crude MCHM, PPH and DiPPH contaminants that were deposited in Putnam County under the erroneously issued permit." He did not explain why he thought the permit was "erroneously issued."

Lisa Kardell, public affairs director for the company, said last week the company dumped 36,000 to 40,000 gallons from Feb. 25 until it ceased March 13 following public outcry. Because the wastewater was mixed with sawdust to solidify it, its unclear how many more tons the company can deposit into the landfill. Waste Management did not respond to calls Monday.

Aluise said last week that the landfill was the only one in the state allowed to accepted the contaminated water. He said the Freedom Industries site cleanup must ensure MCHM doesn't get into waterways, so any rainwater or snow melt water that runs across the site is being collected.

The city of Hurricane had requested an injunction earlier, but Edwards said they dropped that request after Waste Management pledged to stop depositing the chemical. However, he said last week he was still talking with lawyers and chemical experts about what to do about the material already in the landfill.

Reach Ryan Quinn at ryan.quinn@wvgazette.com or 304-348-1254.

Associated Press (Va.)

Danville feeling toxic economic effects of spill

DANVILLE, Va. - When a massive coal ash spill was swept down the Dan River through Danville, the toxic stew smudged this proud mill city's vision of building a new, diversified economic base.

Once a thriving hub for tobacco and textiles, civic leaders now are left to repeatedly assure

residents of this city of 43,000 that the water is safe to drink, forget about persuading businesses to sink roots here. The spill is already being used by competitors to lure business prospects away from Danville, a city official says.

With the full environmental consequences of the spill years away, community leaders fear the city's efforts to redefine itself have suffered immeasurably.

"It's like the town itself has been covered with coal ash, is what it really comes down to," said Andrew Lester, executive director of the Roanoke River Basin Association, a water protection group. "Anyone who would consider moving here would have second thoughts."

The city is now looking to Duke Energy to make good on the damage it has done. The nation's largest power company owns the impoundment pond less than 25 miles upriver from Danville that sprung a leak, spewing the coal ash into the Dan and coating its waters for 70 miles.

City Manager Joe King said Danville is tallying up the damages from the spill, and they'll include more than overtime for city workers at the water treatment plant. He commends Duke for its response to date.

"We want to be reasonable but we expect them not to just pay out-of-pocket expenses but to deal with the coal in our water treatment plant and to right the wrong," he said. "The safety of the drinking water, the safety and condition of the river, our reputation - all those things are going to have to be considered."

The coal ash flowed into the city in the days following the spill in Eden, N.C., turning the river gray, collecting in basins in the century-old municipal water treatment plant and leaving vast deposits of the toxic concoction in sections of the river. Coal ash, the byproduct of coal-fired energy plants, contains arsenic, lead, mercury and other dangerous chemicals.

At the Schoolfield Dam on the Dan, the Environmental Protection Agency has found a 300-by-50-yard blanket of sludge up to 1 foot deep in some sections. The deposit is where the river is tapped by the treatment plant, which has undergone millions of dollars in upgrades in recent years.

State, city and federal officials insist the plant is filtering out the toxins in the coal ash and that tap water exceeds federal clean water standards. To shore up confidence in public drinking water supplies, Gov. Terry McAuliffe toured the water plant on Tuesday, and said he would toast Danville with a glass of tap water.

"I'm just so relieved it has not affected the drinking water," McAuliffe said.

Officials never advised the city's 18,000 water customers to abstain from using treated water, as hundreds of thousands of water users in the Charleston, W.Va., area were told in January when a coal-cleaning agent spilled into the Elk River. Still, many in Danville are buying bottled water or distilling tap water.

Chef Dustin Haberer, who can see the treatment plant from his home, has turned to bottled water since the coal ash spill.

"It's perception," he said. "They can tell us whatever they want. I'm sure they have regulations they need to follow, and I'm sure they are, but that doesn't mean that's good enough for my family."

The fouling of the Dan River couldn't have been a crueler twist for this city, whose past and future are defined by the river that dissects it. Handsome brick tobacco warehouses, lined up like cord wood, stand along the banks of the river downtown ready to come to life again. Mills that once hummed here once turned the waters a different hue - green and red - with dyes used in the manufacturing of textiles. Low-head dams cross the river, remnants of Danville's muscular manufacturing past.

The river had been on the rebound environmentally and city leaders have used the Dan to promote Danville as a recreational resource for canoeing and kayaking, much as Richmond has embraced the James River as a destination for outdoor enthusiasts.

To that end, City Council member Lee Vogler and others worked successfully to have a 15-mile stretch of the Dan River designated a "scenic river."

"We've spent the last several years really promoting the river as a vibrant resource for Danville," Vogler, a youthful-looking 27, said before a public meeting with state environmental officials on Tuesday. "Our slogan is 'Where Innovation' Flows.' "

Duke Energy is responsible for a "preventable situation," Vogler said, and he wants it to be fully accountable for the mess it created. "They keep saying they're going to make it right, and we plan on holding them to that," he said.

Duke officials have been in steady communication with Danville officials and have had "important conversations" about making amends, spokeswoman Paige Sheehan said.

"We are responsible for costs directly related to this spill," Sheehan said. "We're accountable, we're responsible and we'll do the right thing."

A spokesman for Attorney General Mark Herring said he met recently with Duke representatives and "asked them to continue to be honest, open, and accountable to those affected" to ensure speedy reimbursement to state and local governments.

"The situation is now moving from emergency response to longer-term remediation, but it is too early in that process to say where it may go," spokesman Michael Kelly wrote in an email.

Teams of federal and state officials have been testing the waters and its wildlife since the coal ash spill, but the full environmental implications of the contamination will likely take years to assess, said Kevin M. Eichinger, one of two on-site coordinators from the EPA.

The EPA is also tracking where the ash is migrating, he said. The EPA is studying how best to remove the coal ash, including lower sections of the Dan that has pollutants.

"We don't want to go to an area that has elevated concentrations of PCBs and mercury and stir that," Eichinger said.

As for the city's drinking water, Eichinger held up a plastic water bottle filled from a city water fountain.

"I have no problem drinking it," he said. Of others, "It's their right to make their own decisions."

For those who see a bright future for Danville, despite the environmental drama, there are glimmers of hope. Shops and restaurants have opened in The River District, the city's former industrial center, and the city has a collection of stately homes that are perched above the Dan.

Then there's the river.

"Every Danvillian has a pretty intimate relationship with the river," said City Manager King.

"We have a unique environment in that the river is right on the level we are, not down on some gorge or across a chasm. We cross back and forth daily."

Mayor Sherman M. Saunders, an unabashed cheerleader for his city, ticked off the number of foreign-owned companies that have established a presence in Danville during the city's economic development campaign. He believes the city has addressed the primary concern - drinking water safety - and should get on with the business of selling Danville.

"You can't just say for two years, everything is going to stop," Saunders said. "We can't do that."

"We have worked very hard to change our image and we are making progress," he said. "We believe we have a good story to tell."

